

7-1-704 Authorization required to engage in business -- Exemptions -- Procedure.

- (1)
 - (a) An institution subject to the jurisdiction of the department may maintain an office in this state or engage in the activities of a financial institution in this state only if it is authorized to do so by the department.
 - (b) This Subsection (1) does not apply to:
 - (i) any person who is lawfully engaging in the activities of a financial institution in this state on July 1, 1981, unless the institution was not subject to the jurisdiction of the department before that date;
 - (ii) an application to establish a branch or additional office; or
 - (iii) the establishment of a service corporation or service organization.
- (2) An applicant for authorization to become an institution subject to the jurisdiction of the department shall pay to the department the appropriate filing fee, as provided in Section 7-1-401, and shall file with the commissioner:
 - (a) its undertaking to pay all expenses incurred in conducting any administrative proceedings forming part of the department's consideration of the application;
 - (b) its proposed articles of incorporation and by-laws;
 - (c) an application in a form prescribed by the commissioner that includes all information the commissioner requires about the source of the proposed original capital and about the identity, personal history, business background and experience, financial condition, and participation in any litigation or administrative proceeding of the organizers, the proposed members of the board of directors, and the principal officers; and
 - (d) any other information the commissioner requires.
- (3) In addition to the requirements of Title 63G, Chapter 4, Administrative Procedures Act, the commissioner shall, at the expense of the applicant:
 - (a)
 - (i) give notice of the application by publication in three successive issues of a newspaper of general circulation in the county where the principal place of business is to be established; and
 - (ii) give notice of the application by publication as required in Section 45-1-101; and
 - (b) give notice of the application to other institutions subject to the jurisdiction of the department in a manner and to an extent the commissioner considers appropriate;
 - (c) cause the appropriate supervisor to make a careful investigation and examination of the following:
 - (i) the character, reputation, and financial standing and ability of the organizers;
 - (ii) the character, financial responsibility, experience, and business qualifications of those proposed as officers;
 - (iii) the character and standing in the community of those proposed as directors, principal stockholders, or owners;
 - (iv) the need in the service area where the institution would be located, giving particular consideration to the adequacy of existing financial facilities and the effect the proposed institution would have on existing institutions in the area;
 - (v) the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds; and
 - (vi) other facts and circumstances bearing on the proposed institution that the supervisor considers relevant.
- (4)

- (a) The supervisor shall submit findings and recommendations in writing to the commissioner.
 - (b) The application, any additional information furnished by the applicant, and the findings and recommendations of the supervisor may be inspected by any person at the department's office, except those portions of the application or report the commissioner declares to be confidential, pursuant to the applicant's request, in order to prevent a clearly unwarranted invasion of privacy.
- (5)
- (a) If a hearing is held, the applicant shall publish notice of the hearing at the applicant's expense:
 - (i) in a newspaper of general circulation within the county where the proposed institution is to be located at least once a week for three successive weeks before the date of hearing; and
 - (ii) as required in Section 45-1-101 for three weeks before the date of the hearing.
 - (b) The notice shall include the date, time, and place of the hearing and any other information required by the commissioner.
 - (c) The commissioner shall act on the record before him within 30 days after receipt of the transcript of the hearing.
- (6) If no hearing is held, the commissioner may, within 90 days of acceptance of the application as complete, approve or disapprove the application based on the papers filed with him, together with the supervisor's findings and recommendations.
- (7)
- (a) The commissioner may not approve the application unless the commissioner finds that the applicant has established by the preponderance of the evidence that:
 - (i) in light of the need for financial services in the area, the adequacy of existing facilities, and the effect the proposed institution would have on existing institutions in the area, the public need and convenience will be promoted by the establishment of the proposed institution;
 - (ii) in light of the ability of the proposed service area to support the proposed institution, including the extent and nature of existing competition, the economic history and future prospects of the community, and the opportunity for profitable employment of financial institution funds, conditions in the service area in which the proposed institution would transact business afford reasonable promise of a successful operation;
 - (iii) the institution is being formed only for legitimate purposes allowed by the laws of this state;
 - (iv) the proposed capital equals or exceeds the required minimum and is adequate in light of current and prospective conditions;
 - (v) if the applicant is seeking authority to accept deposits, the deposits will be insured or guaranteed by an agency of the federal government;
 - (vi) the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation;
 - (vii) the name of the proposed financial institution does not resemble the name of any other institution transacting business in this state so closely as to cause confusion;
 - (viii) the applicants have complied with all of the provisions of law; and
 - (ix) no properly managed and soundly operated existing institutions offering substantially similar services in the service area to which the application relates will be unduly injured by approval of the application.
 - (b) The commissioner may condition approval of the application on the institution's acceptance of requirements or conditions with respect to insurance that the commissioner considers necessary to protect depositors.
- (8)
- (a) The commissioner shall provide written findings and conclusions on the application.

- (b) Upon approving an application, the commissioner shall:
 - (i) endorse the approval on the articles of incorporation;
 - (ii) file one copy with the Division of Corporations and Commercial Code;
 - (iii) retain one file copy; and
 - (iv) return one copy to the applicant within 10 days after the date of the commissioner's decision approving the application.
- (c) Upon disapproving an application, the commissioner shall mail notice of the disapproval to the applicant within 10 days.
- (d) The commissioner may approve an application subject to conditions the commissioner considers appropriate to protect the public interest and carry out the purposes of this title.
- (e) The commissioner shall give written notice of the decision to all persons who have filed a protest to the application.
- (9) Upon approval of an application for authorization to conduct a business subject to the jurisdiction of the department, the commissioner shall issue a license, permit, or other appropriate certificate of authority if:
 - (a) except in the case of credit unions, all of the capital of the institution being formed has been paid in; and
 - (b) all the conditions and other requirements for approval of the application have been met.
- (10)
 - (a) Any approval by the commissioner of an application under this section is considered revoked unless the business is open and operating within one year from the date of the approval.
 - (b) The commissioner, on written application made before the expiration of that period, and for good cause shown, may extend the date for activation for additional periods not to exceed six months each.
- (11) No person may obtain, for the purpose of resale, a certificate of approval to operate any institution under the jurisdiction of the department.
- (12) The commissioner may approve an application without any notice to other financial institutions to respond to an emergency arising from the insolvency of an existing institution or to prevent the failure of an existing institution if the commissioner makes the findings required by Subsection (7).

Amended by Chapter 388, 2009 General Session